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14 UNITED STATES DISTRICT COURT
15 CENTRAL DISTRICT OF CALIFORNIA

17 KRISTA PERRY, an individual;
18 LARISSA MARTINEZ, an individual;
19 and JAY BARON, an individual,

20 Plaintiffs,

21 v.

22 SHEIN DISTRIBUTION
23 CORPORATION, a Delaware
24 corporation; ROADGET BUSINESS
PTE. LTD; ZOETOP BUSINESS
COMPANY, LIMITED; and DOES 1-
10 inclusive.

25 Defendants.

CASE NO. 2:23-cv-05551-MCS-JPR

**DEFENDANTS' MEMORANDUM
OF POINTS AND AUTHORITIES
IN SUPPORT OF MOTION TO
DISMISS PLAINTIFFS' THIRD
AND SIXTH CLAIMS FOR
RELIEF AND MOTION TO
STRIKE PORTIONS OF THE
COMPLAINT**

Date: November 20, 2023
Time: 9:00 a.m.
Place: Courtroom 7C
Judge: Hon. Mark C. Scarsi

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1 **I. INTRODUCTION**

2 This is not a cognizable RICO case. At its core, this is an action brought by
3 three individual Plaintiffs with mainstream copyright and trademark infringement
4 claims, alleging that Shein Distribution Corporation (together with the other
5 defendants, “Shein” or “Defendants”) infringed on four of Plaintiffs’ copyrighted
6 designs and one trademark—an art print, a throw blanket, an embroidered patch, and
7 a pair of overalls. *See* Compl. ¶¶ 66-107.

8 However, through conjecture, immaterial and inflammatory allegations and
9 conveniently placed buzzwords, Plaintiffs attempt to transmogrify their ordinary
10 copyright and trademark infringement claims into something different: a civil RICO
11 action premised on “criminal copyright infringement.” Plaintiffs’ endeavor is
12 misguided and finds no support in civil RICO case law or legislative history. Indeed,
13 if accepted, Plaintiffs’ RICO overreach and strained interpretation of “criminal
14 copyright infringement” would expose nearly every multinational corporation with a
15 global supply chain and a corporate structure designed to facilitate worldwide sales,
16 to RICO liability whenever ordinary copyright or trademark infringement is alleged.
17 The Court should decline to open this floodgate.

18 Specifically, Plaintiffs’ RICO claim (the “Sixth Claim for Relief”) should be
19 dismissed on several independent grounds:

20 ***First***, although criminal copyright infringement may, in certain limited
21 instances, serve as the basis for a RICO claim, this District has properly held that
22 garden variety copyright infringement claims, like those alleged by Plaintiffs here,
23 “cannot serve as predicate acts to establish a RICO violation.” *Stewart v. Wachowski*,
24 No. CV 03-2873 MMM (VBKx), 2005 WL 6184235, at *6 (C.D. Cal. June 14, 2005).
25 Rather, the legislative history of the Anticounterfeiting Act, which added criminal
26 copyright infringement to the list of RICO predicate acts, makes clear that Congress
27 only intended to extend the scope of RICO to cover large-scale counterfeiting and
28 piracy. *Id.* at *4-6. Nothing of the sort is, or can be, alleged here. Instead, Plaintiffs

1 allege just four instances of copyright infringement over the course of six years. *See*
 2 Compl. ¶¶ 66-100.¹

3 **Second**, Plaintiffs do not, and cannot, plausibly allege that Defendants
 4 “willfully” infringed their copyrights, as required for a RICO claim premised on
 5 predicate acts of criminal copyright infringement. Plaintiffs’ allegation (even if it
 6 were true) that Shein uses a “secretive,” “algorithm-based business model” that
 7 independently “spits out [infringing] design[s]” *without any human involvement* does
 8 not come close to plausibly alleging the requisite “specific intent” for criminal
 9 copyright infringement. *Id.* ¶¶ 5, 32, 35, 117.

10 **Third**, Plaintiffs also do not, and cannot, adequately allege proximate
 11 causation as required by the RICO statute. The Supreme Court has held that
 12 proximate causation in RICO cases requires “some direct relation between the injury
 13 asserted and the injurious conduct alleged[,]” and “[a] link that is ‘too remote,’
 14 ‘purely contingent,’ or ‘indirec[t]’ is insufficient.” *Hemi Grp., LLC v. City of New*
 15 *York*, 559 U.S. 1, 9 (2010) (citation omitted). That description aptly describes
 16 Plaintiffs’ allegations. Plaintiffs themselves acknowledge that the damages they seek
 17 in this action—including diversion of trade, lost profits, and diminishment in the
 18 value of their designs, rights, and reputation—“are difficult to quantify, and are seen
 19 as inherently speculative.” Compl. ¶ 25.

20 **Fourth**, Plaintiffs fail to adequately allege that each of the Defendants
 21 conducted or participated in the conduct of a RICO enterprise. Courts have

22
 23 ¹ Although the Complaint’s allegations must be taken as true here, Shein vigorously
 24 disputes the outrageous suggestion that it has “grown rich” through serial
 25 infringement. *See* Compl. ¶ 6. Shein’s success is, more accurately, attributable to its
 26 technological and business acumen, which enabled it to democratize fashion with
 27 inclusive sizes and offerings at affordable prices. Even Plaintiffs’ own allegations
 28 belie their rhetoric—Plaintiffs can only point to 50 lawsuits over multiple years (none
 of which involve a court or jury finding of infringement) against Shein, which is one
 of the world’s largest fashion and lifestyle retailers, adding over 6,000 products to its
 catalog on a daily basis.

1 “overwhelmingly rejected attempts to characterize routine commercial relationships
2 as RICO enterprises.” *Neerman v. Cates*, No. CV 22-2751 PA (PVCx), 2022 WL
3 18278377, at *6 (C.D. Cal. Dec 28, 2022) (citation omitted). Yet, when scrutinized,
4 the Complaint merely alleges that Defendants are part of a global group of affiliated
5 companies with ordinary parent-subsidary relationships, and that each Defendant
6 engaged in ordinary and routine business conduct. *See, e.g.*, Compl. ¶¶ 15-16, 56,
7 111. Moreover, the Complaint does nothing to specifically allege that any individual
8 Defendant participated in the “operation or management” of the alleged enterprise.
9 *See, e.g., id.*

10 Independent of the flaws in Plaintiffs’ RICO claim, Plaintiff Jay Baron’s claim
11 for copyright infringement (the “Third Claim for Relief”) must also be dismissed.
12 Although Plaintiff Baron alleges that Shein infringed upon his “original artwork,”
13 *see* Compl. ¶¶ 86-91, his artwork (reproduced in Attachment 1 hereto) is anything
14 but—it is composed of the kind of standard elements and stock phrases that courts
15 have repeatedly found to be unprotected by copyright law. *See, e.g., Satava v. Lowry*,
16 323 F.3d 805, 810 (9th Cir. 2003); *Shame on You Prods., Inc. v. Banks*, 120 F. Supp.
17 3d 1123, 1147-49 (C.D. Cal. 2015), *aff’d*, 690 F. App’x 519 (9th Cir. 2017).

18 Finally, Shein’s separate Motion to Strike brought pursuant to Federal Rule
19 12(f) should be granted. The Complaint is riddled with inflammatory, immaterial
20 and false allegations regarding Shein’s purported labor practices, alleged
21 environmental issues and tax strategies. *See* Section VI *infra*. These allegations have
22 no possible bearing on the controversy at issue, which solely relates to alleged
23 copyright and trademark infringement. They are, presumably, only included to cast
24 Defendants in a derogatory light and thus are precisely the type of allegations subject
25 to a motion to strike and ought to be stricken from the Complaint.

1 **II. RELEVANT FACTUAL ALLEGATIONS**

2 For purposes of this motion, the most pertinent allegations of Plaintiffs’
3 Complaint are as follows:²

4 **A. The Parties: Plaintiffs and the Shein Defendants**

5 Plaintiffs are three independent designers who market and/or sell their designs
6 on a small scale online and/or in stores. Compl. ¶¶ 10-12, 29.

7 According to the Complaint, Shein is the “world’s largest fashion retailer,”
8 selling its products on a worldwide basis. Compl. ¶ 17. The Complaint alleges that
9 Shein sells “more clothing than any other [brand] in the world,” *id.* ¶¶ 1, 17, and that
10 Shein’s mobile app is the most downloaded application in the U.S., exceeding even
11 Amazon’s, TikTok’s and Instagram’s. *Id.* ¶18. The pleading also alleges that Shein
12 adds “thousands of new products” to its product line every day. *Id.* ¶ 23. As an e-
13 commerce-only retailer, Shein uses cutting-edge technologies and a revolutionary
14 business model to identify consumer trends and limit excess inventory. *Id.* ¶¶ 4-5,
15 21-24. Through this business model, Shein is able to gauge customer interest in real-
16 time and provide feedback to its third-party suppliers to increase or stop production
17 based directly on market demand. *Id.* ¶ 40. As a result, Shein is able to, and does,
18 add thousands of new items to its online store every day, and over a million new
19 items each year. *Id.* ¶¶ 5, 23, 23 n.6. At the same time, Shein only produces 100 to
20 200 pieces of any product at launch and responds with increased production only if
21 demand warrants it. *Id.* ¶¶ 35, 40.

22 Plaintiffs allege that (like all global businesses) Shein has an organizational
23 structure designed to handle its international operations. *Id.* ¶¶ 44-46. According to
24 the Complaint, Defendant Shein Distribution Corporation (“SDC”) is a “domestic
25

26 ² As required by Rule 12, Defendants take these allegations as true for purposes of
27 this motion. At bottom, however, the Complaint is riddled with allegations that are
28 demonstrably false or presented in a manner that divorces them from the truth. But
 that is a matter for another day.

1 operating company” that handles “administrative functions,” such as recruiting
2 lawyers, accountants, and IT workers as well as designing advertising materials and
3 campaigns. *Id.* ¶ 56. Defendant Roadget Business Pte. Ltd. (“Roadget”) is the owner
4 of the Shein global trademarks and owns the Shein website and mobile app. *Id.* ¶¶ 15,
5 56. And, according to the Complaint, Defendant Zoetop Business Company, Limited
6 (“Zoetop”) owns and operates Shein’s websites and mobile apps.³ *Id.* ¶¶ 16, 56.

7 **B. Plaintiffs’ RICO Allegations**

8 According to the Complaint, Defendants allegedly infringed four of Plaintiffs’
9 copyrighted designs and one trademark—an art print (“Make It Fun”), a throw
10 blanket (“Floral Bloom”), an embroidered patch (“Trying My Best”), and a pair of
11 overalls (“Orange Daisies”). *Id.* ¶¶ 66-107. After alleging these non-extraordinary
12 copyright and trademark infringement claims, Plaintiffs devote the bulk of their
13 Complaint to weaving together a baseless and implausible civil RICO claim premised
14 on predicate acts of alleged criminal copyright infringement. *See, e.g., id.* ¶¶ 108-
15 124. Their allegations, however, undermine the claim.

16 For example, Plaintiffs conclusorily allege that Defendants engage in “large-
17 scale and systematic intellectual property theft.” *Id.* ¶ 1. But, the Complaint points
18 to nothing more than the existence of their four copyright infringement claims, two
19 other copyright lawsuits filed by the same plaintiffs’ counsel, and “reports” of 50
20 other suits over the past several years (none of which are alleged to have resulted in
21 an actual judgment of infringement). *See, e.g., id.* ¶¶ 28, 115. Similarly, although
22 Plaintiffs acknowledge the global reach and complexity of Defendants’ operations—
23 and spend pages (incorrectly) identifying entities in Defendants’ “vertically
24 integrated” corporate structure, *id.* ¶ 45. They claim – with no facts and only empty
25 rhetorical flourishes – that the Company’s corporate structure is designed to
26

27 ³ Zoetop was a private Hong Kong Company; however, Zoetop is no longer in
28 operation. *See* Certification and Notice of Interested Parties, ECF No. 19.

1 “facilitate[]” purported intellectual property theft (rather than to optimize global
2 operations). *See, e.g., id.* ¶¶ 1, 2 n.2, 6, 112.

3 Based on these claims, Plaintiffs seek damages in the form of, among other
4 things, diversion of trade, lost profits, and diminishment in value of their art, rights,
5 and reputation. *Id.* ¶¶ 72-73, 83-84, 90-91, 99-100, 107. But, as Plaintiffs themselves
6 acknowledge, “[s]uch damages are difficult to recover in law, because they are
7 difficult to quantify, and are seen as inherently speculative.” *Id.* ¶ 25.

8 **III. LEGAL STANDARD**

9 Under Federal Rule of Civil Procedure Rule 12(b)(6), dismissal is required
10 where the complaint “lacks a cognizable legal theory or sufficient facts to support a
11 cognizable legal theory.” *Mendiondo v. Centinela Hosp. Med. Ctr.*, 521 F.3d 1097,
12 1104 (9th Cir. 2008) (citation omitted). Whether a complaint contains sufficient
13 factual matter turns on whether the claim stated is plausible on its face. *Ashcroft v.*
14 *Iqbal*, 556 U.S. 662, 678 (2009); *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570
15 (2007). “[A] plaintiff’s obligation to provide the ‘grounds’ of his ‘entitle[ment] to
16 relief’ requires more than labels and conclusions, and a formulaic recitation of the
17 elements of a cause of action will not do. Factual allegations must be enough to raise
18 a right to relief above the speculative level[.]” *Twombly*, 550 U.S. at 555 (citations
19 omitted).

20 **IV. PLAINTIFFS’ RICO CLAIM SHOULD BE DISMISSED FOR** 21 **FAILURE TO STATE A CLAIM**

22 To state a civil RICO claim, a plaintiff must allege (1) conduct (2) of an
23 enterprise (3) through a pattern (4) of racketeering activity (known as ‘predicate acts’)
24 (5) causing injury to [its] business or property. *Swartz v. KPMG LLP*, 476 F.3d 756,
25 760-61 (9th Cir. 2007). Here, the Complaint fails to adequately allege at least four
26 of these five elements: conduct, enterprise, racketeering activity, and causation.

1 **A. Plaintiffs’ Garden Variety Copyright Infringement Claims Cannot**
2 **Serve as Predicate Acts Under RICO.**

3 Central District precedent holds that garden-variety copyright infringement
4 claims “cannot serve as predicate acts to establish a RICO violation.” *Stewart*, 2005
5 WL 6184235, at *6; *see also* cases cited *infra* at 9-10. In her well-reasoned opinion
6 in *Stewart*, Judge Morrow concluded that there was no “Congressional intent to
7 expand RICO liability to all knowing copyright infringement, including acts that
8 cannot be characterized as counterfeiting or piracy[,]” and therefore found that such
9 acts cannot serve as predicate acts to establish a RICO violation. *Stewart*, 2005 WL
10 6184235, at *6.

11 The leading copyright law treatise, *Nimmer on Copyright*, concurs. “[E]very
12 run-of-the-mill copyright case . . . serv[ing] as the basis of [a criminal copyright
13 infringement] indictment . . . lies far afield both from Congress’ intent, and from any
14 rational ordering of the copyright system.” 5 Melville B. Nimmer & David Nimmer,
15 NIMMER ON COPYRIGHT § 15.01(alterations added).

16 Thus, for criminal copyright infringement to serve as a RICO predicate act,
17 Plaintiffs must allege copyright infringement that rises to the level of *piracy or*
18 *counterfeiting*. Plaintiffs have not, and cannot, do so here. Their attempt to transform
19 ordinary copyright infringement claims into predicate acts of criminal copyright
20 infringement to concoct a civil RICO claim should be rejected.

21 **1. The Legislative History of the Anticounterfeiting Act and**
22 **§ 2319 Reveal That Congress Intended to Criminalize**
23 **Counterfeiting and Piracy.**

24 Courts have long recognized that the legislative history ⁴ of the
25 Anticounterfeiting Consumer Protection Act of 1996 (“Anticounterfeiting Act”)
26

27 ⁴ Courts look to legislative history, even when the plain language of a statute is
28 unambiguous, where “the legislative history clearly indicates that Congress meant

1 “reveals that Congress’s true intent” in adding criminal copyright infringement (18
2 U.S.C. § 2319) to the list of RICO predicate acts was “simply to increase the available
3 penalties for counterfeiting and piracy,” and not to criminalize *all* copyright
4 infringement. *Stewart*, 2005 WL 6184235, at *4-5 (“[n]owhere in the legislative
5 history of the Anticounterfeiting Act is there any indication that Congress intended
6 to extend RICO liability to organizations that infringed copyrights by means other
7 than counterfeiting or piracy”).

8 Rather, the legislative history makes clear that “Congress did *not* intend to
9 criminalize *all* intentional copyright infringement or subject *all* multiple acts of
10 intentional infringement to RICO liability.” *Stewart*, 2005 WL 6184235, at *5.
11 Congress, for example, clearly stated that the purpose of H.R. 2511, the bill enacted
12 as the Anticounterfeiting Act, was to “prevent counterfeiting of copyrighted and
13 trademarked goods and services and to ensure that counterfeit goods produced
14 elsewhere cannot enter the United States.” *See, e.g.*, H.R. Rep. No. 104-556, 104th
15 Cong., 2d Sess. (1996). During a hearing on H.R. 2511, a member of the House of
16 Representatives emphasized that “H.R. 2511 will provide much needed protections
17 against copyright and trademark counterfeiting.” *See* Anticounterfeiting Consumer
18 Protection Act: Hearing on H.R. 2511 Before The House Comm. on the Judiciary,
19 104th Cong. (Mar. 12, 1996). This legislative intent is also consistent with the text
20 of the Anticounterfeiting Act, which added various counterfeiting offenses in
21 addition to criminal copyright infringement as predicate acts of “racketeering.” *See*
22 Pub. L. No. 104-153, § 3, 110 Stat. 1386 (1966).

23 The legislative history of the criminal copyright statute itself, 18 U.S.C § 2319,
24 likewise shows that the Anticounterfeiting Act was directed at counterfeiting and
25 piracy. The Supreme Court has recognized that Congress enacted § 2319 to
26 “strengthen the laws against record, tape, and film piracy” because it “belie[ved] that
27 _____
28 something other than what it said.” *Stewart*, 2005 WL 6184235, at *4 (quoting *Cal.*
Dep’t of Soc. Servs. v. Thompson, 321 F.3d 835, 853 (9th Cir. 2003)).

1 the existing misdemeanor penalties for copyright infringement were simply
2 inadequate to deter the enormously lucrative activities of large-scale bootleggers and
3 pirates.” *Dowling v. United States*, 473 U.S. 207, 224-25 (1985). And even though
4 § 2319 was later expanded to include other types of copyrighted works, that revision
5 “was intended merely to expand the types of *counterfeiting* activities punishable as
6 felonies and not to work any other substantive change to the section.” *Stewart*, 2005
7 WL 6184235, at *6 (emphasis added); *see also* Onimi Erekosima & Brian Koosed,
8 *Intellectual Property Crimes*, 41 AM. CRIM. L. REV. 809, 829 (Spring, 2004)
9 (“Enacted in October 1992, the Copyright Felony Act responded primarily to the
10 growing problem of large-scale computer software piracy.”).

11 **2. This District’s Precedent Holds that Garden Variety**
12 **Infringement Claims Cannot Serve as RICO Predicate Acts.**

13 After *Stewart*, courts in the Central District of California have consistently
14 held that garden-variety copyright infringement claims cannot serve as predicate acts
15 to establish a RICO violation. *Stewart*, 2005 WL 6184235, at *5-6, *15 (granting
16 motion to dismiss RICO claims premised on allegations of ordinary copyright
17 infringement); *Boyman v. Disney Enters., Inc.*, No. CV 17-8827-DMG (JEM), 2018
18 WL 5094902, at *5 (C.D. Cal. June 1, 2018) (granting motion to dismiss where
19 “purported copyright infringement” did not “constitute RICO predicate acts as a
20 matter of law”); *Steward v. West*, No. CV 13-02449-BRO (JCx), 2013 WL 12120232,
21 at *6 (C.D. Cal. Sept. 6, 2013) (granting motion to dismiss RICO claim because “the
22 alleged acts of copyright infringement are neither counterfeiting nor piracy”); *MHF*
23 *Zweite Acad. Film GmbH & Co. KG v. Warner Bros Ent. Inc.*, No. CV 12-2381-JFW
24 (JCx), 2012 WL 13012677, at *2-3 (C.D. Cal. Aug. 13, 2012) (denying motion for
25 leave to amend complaint to add RICO claim premised on ordinary copyright
26 infringement); *Hunter v. Tarantino*, No. CV 10-03387 SJO (PJWx), 2010 WL
27 11579019, at *10 (C.D. Cal. July 15, 2010) (granting motion to dismiss because
28 “copyright infringement beyond piracy or counterfeiting . . . cannot serve as the

1 predicate offense for Plaintiffs’ RICO claim”); *see also* *McZeal v. Amazon Servs.,*
2 *LLC*, No. 2:21-cv-07093-SVW-RAO, 2021 WL 5213099, at *5 (C.D. Cal. Nov. 8,
3 2021) (granting motion to dismiss because “ordinary trademark infringement claims
4 cannot be contorted into a RICO violation”), *aff’d sub nom. McZeal v. Amazon.com*
5 *Servs., LLC*, 2023 WL 3563009 (9th Cir. May 19, 2023). Courts outside the Central
6 District of California (but still within the Ninth Circuit) have likewise dismissed
7 RICO claims predicated on copyright infringement absent allegations of
8 counterfeiting or piracy. *See, e.g., Robert Kubicek Architects & Assocs. Inc. v. Bosley,*
9 *No. CV 11–2112 PHX DGC*, 2012 WL 3149348, at *2 (D. Ariz. Aug. 1, 2012).⁵

10 These precedents mandate dismissal here. Plaintiffs’ Complaint merely
11 alleges garden-variety infringement claims. Plaintiffs do not plausibly allege that
12 Defendants engaged in the type of large-scale organized counterfeiting or piracy that
13 the Anticounterfeiting Act and 18 U.S.C. § 2319 are intended to address. Nor can
14 they—courts have found such large-scale counterfeiting or piracy only where the
15 allegations implicate an exceptionally high volume of allegedly infringing items that
16 typically have a relatively high aggregate retail value. *See, e.g., United States v.*
17 *Larracuenta*, 952 F.2d 672, 673 (2d Cir. 1992) (defendant bootlegged thousands of
18 copyrighted films via use of a “counterfeiting laboratory”); *United States v. Ndhlovu*,
19 510 F. App’x. 842, 846 (11th Cir. 2013) (per curiam) (defendant committed “high-
20 volume counterfeit manufacturing” of over 6,500 infringing CDs and DVDs); *United*
21 *States v. Chalupnik*, 514 F.3d 748, 750–51 (8th Cir. 2008) (defendant engaged in
22 counterfeiting scheme involving nearly 4,000 infringing CDs and DVDs). In
23 *Larracuenta*, for example, the defendant sold over 2,500 counterfeit movies, whose

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25 ⁵ If Plaintiffs point to diverging opinions from the Northern District of California,
26 and courts outside the Ninth Circuit, none of these precedents is binding on this Court.
27 Because the *Stewart* decision and its progeny are better-reasoned, this Court should
28 follow the majority approach in the Central District “to avoid . . . an intra-District
split[.]” *See, e.g., Islas v. Ford Motor Co.*, No. EDCV 18-2221-GW(SPx), 2021 WL
6104187, at *2 (C.D. Cal. Sept. 14, 2021) (“if for no other reason than to avoid
deepening an intra-District split, the Court will follow the majority approach to this
question’s outcome”).

1 aggregate value exceeded \$190,000. 952 F.2d at 673-74. Similarly, *Chalupnik* and
2 *Ndhlovu* involved counterfeiting schemes involving thousands of infringements,
3 each with aggregate retail values of over \$100,000. Allegations of small-scale
4 infringements are simply insufficient to constitute criminal copyright infringement.
5 *See Helios Int’l S.A.R.L. v. Cantamessa USA, Inc.*, 23 F. Supp. 3d 173, 192 (S.D.N.Y.
6 2014) (finding that “over 100 pieces of allegedly infringing jewelry . . . does not
7 constitute large-scale organiz[ed] counterfeiting schemes cognizable under § 2319”);
8 *see also* Nimmer et al, *supra*, 5 NIMMER ON COPYRIGHT § 15.05 (“Only the most
9 egregious instances of criminal copyright infringement have ever been upheld as
10 predicate offenses to racketeering charges under RICO.”).

11 Here, Plaintiffs allege nowhere near the “large-scale” piracy meant to be
12 addressed by § 2319. Indeed, the Complaint alleges the opposite. Plaintiffs allege
13 that Shein sold a modest number of infringing products with a very modest aggregate
14 retail value. *See* Compl. ¶¶ 67-70, 78-80, 86-87, 93-96, 103-04. As Plaintiffs
15 acknowledge, Shein “produces very small quantities of [each] item for sale,” with
16 the “initial production run . . . as low as 100-200 units per SKU, compared to the
17 thousands of pieces typically produced by traditional peer retailers.” *Id.* ¶ 35. The
18 Complaint also shows that the “Make it Fun” print sold for just \$3 on the Shein
19 website. *Id.* ¶ 69. Although the rest of the screen captures in the Complaint are
20 pixelated and/or do not include price, *see id.* ¶¶ 80, 87, 96, it is reasonable to infer
21 that the other items at issue were sold at similarly modest prices. *See also id.* ¶ 5
22 (alleging that Shein items are offered for sale at prices “low enough to render the
23 garments truly disposable”). Thus, even accepting Plaintiffs’ allegations as true, the
24 “very small quantities of [each] item [available] for sale,” combined with the low
25 price point of Shein’s allegedly infringing products, simply does not bring Shein’s
26 alleged infringement in line with that contemplated by § 2319.

1 Accordingly, the Court should dismiss Plaintiffs’ RICO claim because the
2 alleged acts of ordinary copyright infringement cannot serve as predicate acts to
3 establish a RICO violation.

4 **B. Plaintiffs Also Fail to Plausibly Allege “Willful” Copyright**
5 **Infringement.**

6 To establish a predicate act of criminal copyright infringement, Plaintiffs also
7 must plausibly allege that Defendants “willfully” infringed Plaintiffs’ copyrights.
8 *See* 17 U.S.C. § 506(a)(1)(A) (imposing criminal liability on “[a]ny person who
9 willfully infringes a copyright” and “for purposes of commercial advantage or private
10 financial gain[]”); *see also Mattel, Inc. v. MGA Ent., Inc.*, 782 F. Supp. 2d 911, 1042
11 (C.D. Cal. 2011) (applying this standard to a civil RICO claim alleging predicate acts
12 of criminal copyright infringement). The “willfulness” element requires a “voluntary,
13 intentional violation of a known legal duty.” *United States v. Liu*, 731 F.3d 982, 990
14 (9th Cir. 2013) (citation omitted), (a defendant must act with “specific intent” to
15 violate someone’s copyright). *Id.* at 989-90.

16 Again, the allegations of Plaintiffs’ Complaint fail to satisfy this high bar.
17 Here, the Complaint alleges that Defendants’ purported copyright infringement was
18 the result of a computer “algorithm” that independently “spits out a design,” not a
19 specific intent (or even knowledge) by Defendants to copy Plaintiffs’ designs. *See*,
20 *e.g.*, Compl. ¶ 35; *see also id.* ¶ 32 (questioning whether “humans are even involved”).
21 Moreover, although Plaintiffs make the conclusory allegation that Defendants engage
22 in “a systematic and continuous” pattern of criminal copyright infringement, *id.* ¶ 17,
23 the Complaint acknowledges that only a tiny fraction of Shein’s designs have ever
24 been subject to allegations of infringement. *Id.* ¶¶ 28, 115. For example, Plaintiffs
25 point to approximately 50 copyright infringement cases over two years against the
26 company, which is *de minimis* compared to the approximately 6,000 new styles the
27 Complaint alleges that Shein adds to its website *every day*. *Id.* ¶¶ 23 n.6, 28, 33.

1 These allegations fall far short of plausibly alleging the requisite specific intent to
2 commit willful copyright infringement.

3 Accordingly, the Court should dismiss Plaintiffs' RICO claim on the
4 independent ground that it fails to sufficiently allege predicate acts of criminal
5 copyright infringement.

6 **C. Plaintiffs Cannot Allege the Requisite Proximate Causation Under**
7 **RICO.**

8 To have standing under civil RICO, Plaintiffs must show that the alleged RICO
9 violation proximately caused their injuries. *See Holmes v. Sec. Investor Prot. Corp.*,
10 503 U.S. 258, 268 (1992). Proximate causation under RICO requires "some direct
11 relation between the injury asserted and the injurious conduct alleged." *Hemi Grp.*,
12 559 U.S. at 9 (citation omitted). A link that is "too remote," "purely contingent," or
13 "indirec[t]" is insufficient. *Id.* Plaintiffs' proximate cause allegations in the
14 Complaint fall far short of that required by RICO.

15 The Ninth Circuit's decision in *Sybersound Records, Inc. v. UAV Corp.*, 517
16 F.3d 1137 (9th Cir. 2008) is instructive. In *Sybersound*, the Ninth Circuit affirmed
17 dismissal of a civil RICO claim premised on criminal copyright infringement. *Id.* at
18 1148. In reaching its decision, the court noted that the Ninth Circuit has formulated
19 three non-exhaustive factors to determine whether the RICO proximate causation
20 requirement has been met, including "whether it will be difficult to ascertain the
21 amount of the plaintiff's damages attributable to defendant's wrongful conduct[.]"
22 *Id.* at 1147-48. The court also relied on the Supreme Court's decision in *Anza v.*
23 *Ideal Steel Supply Corp.*, 547 U.S. 451, 460 (2006), which found the absence of
24 proximate causation where, among other things, the defendant's "lost sales could
25 have resulted from factors other than petitioner's alleged acts of fraud" given that
26 "[b]usinesses lose and gain customers for many reasons" *Sybersound*, 517 F.3d
27 at 1148 (quoting *Anza*, 547 U.S. at 459). Quoting *Anza*, the court noted that "[t]he
28

1 element of proximate causation . . . is meant to prevent these types of intricate,
2 uncertain inquiries from overrunning RICO litigation.” *Id.* at 460.

3 Based on this precedent, the Ninth Circuit held that the plaintiff could not
4 “overcome the proximate causation hurdle to assert a RICO violation” because the
5 court would have to engage in “a speculative and complicated analysis” to determine
6 what percentage of the plaintiff’s decreased sales, if any, were attributable to the
7 defendants’ alleged RICO violation. *Sybersound*, 517 F.3d at 1148-49; *see also L.A.*
8 *Turf Club, Inc. v. Horse Racing Labs, LLC*, No. CV 15-09332 SJO (JEMx), 2016
9 WL 6823493, at *4 (C.D. Cal. May 2, 2016) (dismissing civil RICO claim where the
10 plaintiffs “fail[ed] to account for the other reasons why customers may place wagers
11 somewhere other than at a race track[]”); *Club One Casino, Inc. v. Sarantos*, No.
12 1:17-cv-00818-DAD-SAB, 2018 WL 4719112, at *5 (E.D. Cal. Sept. 28, 2018)
13 (finding that “numerous other factors, aside from defendants’ alleged actions, could
14 have led to plaintiffs’ decline in business, such as the demand for table games in
15 Fresno, a change in the local economy, or the manner in which plaintiffs operated
16 their business”), *aff’d sub nom. Club One Casino, Inc. v. Perry*, 837 F. App’x 459
17 (9th Cir. 2020).

18 *Sybersound* and these other precedents dictate the result in this instance. Here,
19 Plaintiffs allege damages in the form of “diversion of trade, loss of profits, and a
20 diminishment in the value of [their] designs and art, [their] rights, and [their]
21 reputation.” Compl. ¶¶ 72, 83, 90, 99. But numerous other factors, aside from
22 Defendants’ alleged conduct, could have led to Plaintiffs’ lost profits and any decline
23 in business and reputation, including consumer preferences, economic changes, or
24 the manner in which Plaintiffs operated their businesses (or the fact that, as alleged,
25 Plaintiffs operated small businesses). As in *Sybersound*, the Court would have to
26 engage in “a speculative and complicated” analysis to determine what damages, if
27 any, are attributable to Defendants’ alleged copyright infringement. Plaintiffs
28 themselves acknowledge that “[s]uch damages are difficult to recover in law, because

1 they are difficult to quantify, and are seen as inherently speculative.” *Id.* ¶ 25.
2 Accordingly, the Court should dismiss Plaintiffs’ RICO claim for failure to
3 adequately allege proximate causation.

4 **D. Plaintiffs Fail to Adequately Allege That Each Defendant**
5 **Participated in the Conduct of a RICO Enterprise.**

6 Finally, Plaintiffs fail to sufficiently allege that each Defendant participated in
7 the “conduct” of a RICO “enterprise.”

8 First, although the term “enterprise” is broadly defined to include “any . . .
9 legal entity” or “group of individuals associated in fact,” courts have frequently and
10 “overwhelmingly rejected attempts to characterize routine commercial relationships
11 as RICO enterprises.” *Neerman v. Cates*, No. CV 22-2751 PA (PVCx), 2022 WL
12 18278377, at *6 (C.D. Cal. Dec 28, 2022) (citation omitted).⁶

13 The Complaint in this case is no different. When stripped of its hyperbole and
14 conclusory allegations, the Complaint merely alleges that each of the Defendants
15 engaged in ordinary and routine business conduct as part of a global group of
16 affiliated companies. For example, Plaintiffs allege that SDC is a “domestic
17 operating company” that has a “vertically integrated structure,” and manages
18

19 ⁶ See also *In re JUUL Labs, Inc., Mktg., Sales Pracs., & Prod. Liab. Litig.*, 497 F.
20 Supp. 3d 552, 599 (N.D. Cal. 2020) (“[W]here the individual constituents of an
21 asserted enterprise are alleged only to have conducted the ‘regular’ business of the
22 corporate entity or business in their own interests, those allegations are insufficient
23 to support a RICO enterprise[.]”); *Shaw v. Nissan N. Am., Inc.*, 220 F. Supp. 3d 1046,
24 1054 (C.D. Cal. 2016) (“entities engaged in ‘ordinary business conduct and an
25 ordinary business purpose’ do not necessarily constitute an ‘enterprise’ bound by
26 common purpose under RICO[.]” (citation omitted); *Gomez v. Guthy-Renker, LLC*,
27 No. EDCV 14-01425 JGB (KKx), 2015 WL 4270042, at *8-11 (C.D. Cal. July 13,
28 2015) (granting motion to dismiss RICO claim where plaintiffs attempted to
characterize routine commercial relationships as a RICO enterprise); *In re Jamster
Mktg. Litig.*, No. 05cv0819 JM(CAB), 2009 WL 1456632, at *5 (S.D. Cal. May 22,
2009) (granting motion to dismiss RICO claim where the plaintiffs alleged that the
defendants engaged in “ordinary business conduct,” as opposed to a common purpose
to engage in a course of illegal conduct).

1 “administrative functions,” such as hiring “lawyers, accountants, and related
2 Information Technology workers” and creating “advertising materials and
3 campaigns.” Compl. ¶ 56. Plaintiffs also allege that Roadget owns the “Shein
4 trademarks” as well as the U.S. website and mobile application. *Id.* ¶¶ 15, 56.
5 Moreover, Plaintiffs allege that Zoetop “owns and operates [Shein’s] web sites and
6 mobile apps” and “until recently owned the [Shein] trademarks.” *Id.* ¶¶ 16, 56. None
7 of these routine business actions are wrongful or establish the existence of a RICO
8 enterprise.⁷

9 Plaintiffs have also failed to sufficiently allege that each of the Defendants
10 “participate[d] in the operation or management of the enterprise itself.” *See Reves v.*
11 *Ernst & Young*, 507 U.S. 170, 185 (1993). This requires a “showing that the
12 defendants conducted or participated in the conduct of the *enterprise’s affairs*, not
13 just their *own affairs*.” *Cedric Kushner Promotions, Ltd. v. King*, 533 U.S. 158, 163
14 (2001) (internal quotation marks omitted) (citation omitted). Aside from conclusory
15 allegations and impermissible group pleading, the Complaint fails to specifically
16 allege that *any* individual Defendant participated in the “operation or management”
17 of the alleged enterprise. Rather, as discussed above, Plaintiffs merely allege that
18 each Defendant engaged in ordinary business conduct.

19 **V. PLAINTIFF BARON’S COPYRIGHT INFRINGEMENT CLAIM**
20 **MUST BE DISMISSED FOR FAILURE TO STATE A CLAIM**

21 To establish a prima facie case of copyright infringement, a plaintiff must show
22 (1) ownership of a valid copyright; and (2) copying of the protected elements of the
23

24 ⁷ A few paragraphs after describing Shein as “vertically integrated,” Plaintiffs
25 contradictorily allege that Shein is “formally decentralized.” Compl. ¶ 59. At
26 bottom, despite pages and pages of prolix allegations, *id.* ¶¶ 43-65, the Complaint
27 ultimately describes nothing more than a complex corporate structure as might be
28 expected of a company doing business on a worldwide basis. *Id.* ¶ 17. That certain
litigants may have difficulty identifying proper parties to name as defendants does
not remotely establish that the structure qualifies as a RICO “enterprise.”

1 work by the defendant. *See Leadership Stud., Inc. v. ReadyToManage, Inc.*, 2:15-cv-
2 09459-CAS(AJWx), 2017 WL 2408118, at *2 (C.D. Cal. June 2, 2017) (citing *UMG*
3 *Recordings, Inc. v. Augusto*, 628 F.3d 1175, 1178 (9th Cir. 2011)); *Apps v. Universal*
4 *Music Grp., Inc.*, 283 F. Supp. 3d 946, 951–52 (D. Nev. 2017), *aff’d*, 763 F. App’x
5 599 (9th Cir. 2019). To prove the second element, a plaintiff must show that the
6 protected material is “original” and that there is “substantial similarity of the general
7 ideas and expression between the copyrighted work and the defendant[s] work.”
8 *Satava v. Lowry*, 323 F.3d 805, 810 (9th Cir. 2003); *Apps*, 283 F. Supp. 3d at 951-
9 52. Plaintiff Baron’s copyright infringement claim (the Third Claim for Relief) fails
10 to meet this standard.

11 As an initial matter, Plaintiff Baron himself concedes that the Copyright Office
12 refused his copyright registration. Compl. ¶ 86. Given that Baron allegedly
13 “complied with 17 U.S.C. § 411 in that the deposit, application, and fee required for
14 registration [were] delivered to the Copyright Office in proper form,” *id.*, it is
15 reasonable to infer that the Copyright Office rejected his application for lack of
16 creativity and/or noncompliance with copyright law. Indeed, “[t]he Copyright Office
17 is required to refuse to register claims to copyright that do not satisfy the copyright
18 law or other legal or procedural requirements.” United States Copyright Office, 2017
19 Annual Report at 4, available at
20 <https://www.copyright.gov/reports/annual/2017/ar2017.pdf>. Although the vast
21 majority of applications are granted by the Copyright Office, the Office refuses a
22 small number of applications for lack of creativity or noncompliance with other
23 requirements. *See* United States Copyright Office, 2020 Annual Report at 18,
24 available at <https://www.copyright.gov/reports/annual/2022/ar2022.pdf>.⁸ It is
25

26 ⁸ “Of the hundreds of thousands of applications containing millions of works
27 submitted each year, the Office refuses only a small number for lack of creativity or
28 noncompliance with other requirements. In FY 2022, the Office refused
approximately 3.4 percent of the 486,428 claims received.” *Id.*

1 therefore telling that Plaintiff Baron’s application was one of those few that was
2 rejected.

3 Moreover, Plaintiff Baron does not allege the copying of *original* elements. A
4 plaintiff’s work is not original if the work expresses “standard, stock, or common”
5 elements that are “not protectable under copyright law.” *Satava*, 323 F.3d at 810.⁹
6 Here, Baron’s design is merely a generic nametag with the phrase “Trying My Best”
7 included. Compl. ¶ 87; *see also* Attachment 1. This design is “so commonplace . . .
8 that to recognize copyright protection . . . effectively would give [Baron] a monopoly”
9 on the nametag design. *Satava*, 323 F.3d at 812. In fact, a Google Image search for
10 “Hello I’m trying my best designs” results in pages of nametags nearly identical to
11 Baron’s “original” artwork.¹⁰ This commonplace nametag design is not protectable
12 under copyright law.

13 Similarly, “[s]hort, stock phrases” are not copyright protectable. *See Shame*
14 *on You*, 120 F. Supp. 3d at 1147-49 (internal citation omitted); 37 C.F.R. § 202.1;
15 *Ets–Hokin v. Skyy Spirits, Inc.*, 225 F.3d 1068, 1081 (9th Cir. 2000) (“Brand names,
16 trade names, slogans, and other short phrases or expressions cannot be copyrighted,
17 even if they are distinctively arranged or printed”). For instance, in *Apps*, the court

18
19 ⁹ From this principle, courts have held that no copyright protection may be afforded
20 to “commonplace” and “typical” ideas such as “producing a glass-in-glass jellyfish
21 sculpture or to elements of expression that naturally follow from the idea of such a
22 sculpture,” *id.* at 810-11; producing stuffed dinosaur toys, *Aliotti v. R. Dakin & Co.*,
23 831 F.2d 898, 901 (9th Cir. 1987); or producing ornaments where the defendant
24 failed to identify elements that were not “commonplace or dictated by the idea of . .
25 . a stereotypical frog[.]” *George S. Chen Corp. v. Cadona Int’l, Inc.*, 266 F. App’x
26 523, 524 (9th Cir. 2008).

27 ¹⁰ *See*
28 https://www.google.com/search?q=hello+i%27m+trying+my+best+designs&tbm=isch&ved=2ahUKEwjJmPTvmu2BAxUnNEQIHWZbA1EQ2-cCegQIABAA&oq=hello+i%27m+trying+my+best+designs&gs_lcp=CgNpbWcQA1CeA1ieA2DDBWgAcAB4AIABR4gBhQGSAQEymAEAoAEBqgELZ3dzLXdpei1pbWfAAQE&sclient=img&ei=jCsmZcmiEKfokPIP5raNiAU&bih=507&biw=1043.

1 held that the plaintiff had no copyright protection for the phrase “I need to know now”
2 in the chorus of her song, as this phrase “is not Apps’s original phrase.” 283 F. Supp.
3 3d at 952. Here, as in *Apps*, Baron’s copyright infringement claim must fail. Neither
4 phrase in Baron’s artwork—“Hello, I’m” or “Trying My Best”—is Baron’s original
5 phrase, so he has no copyright protection for either.

6 Because Baron’s artwork “combine[s] several unprotectable ideas and
7 standard elements,” he may not utilize copyright law to seize these elements for his
8 exclusive use. *Satava*, 323 F.3d at 811. Baron’s Third Claim for Relief must
9 therefore be dismissed.

10 **VI. INDEPENDENTLY, THE COURT SHOULD STRIKE PLAINTIFFS’**
11 **IMMATERIAL, IMPERTINENT, AND SCANDALOUS**
12 **ALLEGATIONS UNDER FEDERAL RULE 12(F)**

13 The Court should also strike the immaterial, impertinent, and scandalous
14 allegations that have no basis in truth and no bearing on Plaintiffs’ claims. *See* Fed.
15 R. Civ. Proc. 12(f). The essential function of a motion to strike is “to avoid the
16 expenditure of time and money that must arise from litigating spurious issues by
17 dispensing with those issues prior to trial.” *Mireskandari v. Daily Mail & Gen. Tr.*
18 *PLC*, No. CV 12-02943 MMM (FFMx), 2013 WL 12129642, at *1 (C.D. Cal. July
19 31, 2013) (citation omitted). Pleadings are “immaterial” when they have “no
20 essential or important relationship to the claim for relief or the defenses being
21 pleaded.” *Id.* at *2 (citation omitted). Pleadings are “impertinent” when they “do
22 not pertain, and are not necessary, to the issues in question.” *Id.* (citation omitted).
23 And pleadings are “scandalous” when they improperly cast a “cruelly derogatory
24 light on a party or person.” *Id.* at *4 (citation omitted).

25 Here, the Complaint is riddled with inflammatory hearsay allegations
26 regarding Shein’s purported labor practices, environmental issues, or tax planning
27 that have no relevance to the copyright and trademark infringement claims at the
28 heart of this case and portend Plaintiffs’ intention to engage in intrusive and

1 burdensome discovery requiring Shein to refute the baseless and irrelevant
2 allegations. In particular, Defendants move to strike the following allegations from
3 the Complaint:

- 4 • Compl. ¶ 1 at page 1, lines 7-10 (alleging that Shein is a “societal threat”
5 contributing to “environmental damage, sweatshop (or worse) labor
6 conditions, tax avoidance, child safety”);
- 7 • *Id.* ¶ 1 at page 1 n.1, lines 15-18 (alleging that the “dangers posed by Shein”
8 include “exploitation of trade loopholes” and “forced labor”);
- 9 • *Id.* ¶ 2 at page 2, lines 1-4 (alleging that Shein “survives grave reports of
10 slave labor”);
- 11 • *Id.* ¶ 2 at page 2, lines 11-13, and page 3, line 1 (alleging that Shein sells
12 “Swastikas”);
- 13 • *Id.* ¶¶ 25-27 (alleging that Shein has been criticized regarding “Forced
14 Labor,” “Other labor violations,” “Health hazards,” “Environmental
15 impact,” and “Tax avoidance”);
- 16 • *Id.* ¶ 30 at page 14, line 11 (alleging that Shein’s products are “cut and sewn
17 in a sweatshop”);
- 18 • *Id.* ¶ 33 at page 16, line 2 (alleging that Shein “employs the sweatshop”
19 version of a design process); and
- 20 • *Id.* ¶ 39 at page 18, lines 17-18 (alleging that Shein uses “questionable labor
21 practices”).

22 These allegations are impertinent and immaterial because they would not be
23 admissible at trial and have no possible bearing on the controversy at issue, which
24 relates solely to alleged copyright and trademark infringement—not purported labor
25 practices, environmental issues or taxes. In fact, Plaintiffs themselves acknowledge
26 that this case is only “tangentially” about such matters. *Id.* ¶ 3; *see also* ¶ 2 n.2
27 (noting that alleged “intellectual property misappropriation” is the “impetus for this
28 action”). As further evidence of the immateriality of these allegations, Plaintiffs
never address them again. As such, these allegations should be stricken from the
Complaint. *See, e.g., Mireskandari*, 2013 WL 12129642, at *1-2 (granting motion
to strike allegations of blackmail where the plaintiff did not allege a cause of action
based on this purported conduct).

These allegations are also scandalous because they appear to be included solely
to tarnish Defendants and cast them in an unfavorable and prejudicial light. *See, e.g.,*

1 *Citizens for Quality Educ. San Diego v. San Diego Unified Sch. Dist.*, No. 17-cv-
2 1054-BAS-JMA, 2018 WL 828099, at *4 (S.D. Cal. Feb. 12, 2018) (granting motion
3 to strike where immaterial allegations were “likely intended to ‘besmirch’
4 Defendants and cast them in a derogatory light”); *see also Haddock v. Countrywide*
5 *Bank, NA*, No. CV-14-6452 PSG (FFMx), 2015 WL 9257316, at *15 (C.D. Cal. Oct.
6 27, 2015) (courts may strike allegations under Rule 12(f) when “allegations [are]
7 purely designed to besmirch”); *Mazzeo v. Gibbons*, 649 F. Supp. 2d 1182, 1202 (D.
8 Nev. 2009) (striking allegations as scandalous where they “appear[] calculated to
9 cast Defendants in a derogatory light and [are] full of wholly irrelevant material”).

10 Accordingly, the Court should strike the allegations listed above.

11 **VII. CONCLUSION**

12 For the foregoing reasons, the Court should dismiss Plaintiffs’ Third and Sixth
13 Claims for Relief with prejudice and, pursuant to Federal Rule 12(f), strike the
14 Complaint’s immaterial, impertinent, and scandalous allegations.

15 DATED: October 13, 2023

PAUL HASTINGS LLP

17
18 By: /s/ Steven A. Marenberg
Steven A. Marenberg

19 Attorneys for Defendants

20 **L.R. 11-6.1 CERTIFICATION**

21 The undersigned, counsel of record for Defendants, certifies that this brief
22 contains 6,621 words, which complies with the word limit of L.R. 11-6.1.
23

24 PAUL HASTINGS LLP

25
26 DATED: October 13, 2023

By: /s/ Steven A. Marenberg
Steven A. Marenberg